THE HON'BLE SRI JUSTICE K.C. BHANU

On Tuesday, the twenty seventh day of September,

Two thousand and five.

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W.P. NO.19709 of 2003

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W.P.No.3773 of 2005

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W.P.No.19709 of 2003

The Executive Director, Guntur District Scheduled Caste Service Co-operative Society Limited, Z.P., Compound, Guntur, and another.

Petitioners.

And:

Government of Andhra Pradesh, represented by its Secretary, Labour, Employment, Training & Factories Department, Secretariat, Hyderabad and others.

Respondents.

W.P.No.3773 of 2005

The Executive Director, Guntur District Scheduled Caste Service Co-operative Society Limited, Z.P., Compound, Guntur, and another.

Petitioners.

And:

The Presiding Officer, Labour Court, Guntur, and another.

Respondents

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COMMON ORDER:

W.P.No.3773 of 2005 is filed challenging the order dated 24.2.2005 passed in E.P.No.5 of 2003 in I.D.No.75 of 1996, on the file of Labour Court, Guntur, whereas the award dated 13.12.2001, passed in I.D.No.75 of 1996 on the file of the Labour Court, Guntur is under challenge in the W.P.No.19709 of 2003.

Ande Abraham Dharmagnani who is 3rd and 2nd respondent in W.P.No.19709 of 2003 and W.P.No.3773 of 2005 respectively is arrayed as 3rd respondent; Government of A.P. in W.P.19709 of 2003 is arrayed as 1st respondent and the Labour Court, Guntur, 2nd and 1st respondent in W.P.No.19709 of 2003 and W.P.No.3773 of 2005 respectively is arrayed as 2nd respondent.

Before adverting to the questions involved in both the writ petitions relating to the same subject matter, it may be necessary, briefly, to note the relevant facts leading to the filing of these writ petitions: The petitioners herein filed the writ

petitions to quash the award passed in I.D.No.75 of 1996 and also execution proceedings in E.P.5 of 2003 in I.D.No.75 of 1996. It is averred that the District Scheduled Caste Service Cooperative Society Limited (DSCSCS), Guntur is constituted and registered under A.P. Cooperative Societies Act, 1964 to evolve schemes for the upliftment of the S.C. beneficiaries in the district as per its byelaws and to implement the same with financial aid provided by the State and Central Governments. During the course of such activities, the 3rd respondent was engaged as section writer on daily wage basis and disengaged on 15.6.1989. Further, the 3rd respondent, along with some other NMR labourers filed W.P.No.7778 of 1989 & batch and obtained interim directions to continue their service and the above writ petition along with batch were disposed of on 12.12.1989, confirming the orders of termination and so the 3rd respondent was again disengaged from 30.1.1990. Against the said order, the 3rd respondent filed I.D.No.75 of 1996 wherein the award was passed on 13.12.2001and he has been continued in service and also awarded wages with effect from 26.2.1996. Then, the District Society filed W.P.No.19709 of 2003 questioning the award passed in I.D.No.75 of 1996 and the 3rd respondent filed E.P.No.5 of 2003 for implementation of the award passed in I.D.No.75 of 1996, wherein the execution court passed order on 24.2.2005. Challenging the said orders the present writ petitions are filed.

The learned counsel for the petitioners contended that the 3rd respondent herein was appointed under the scheme but not against any sanctioned post and after six years after the disposal of W.P.No.7778 of 1989 and batch, the industrial dispute was raised and the Labour Court, without adverting to the findings of this Court in W.P.No.7778 of 1989 ordered re-instatement and therefore the same has to be interfered with.

The learned counsel for the 3rd respondent contended that the findings of the labour Court are not perverse as it is based upon some evidence. After an elaborate consideration of the material referred to, the Labour Court gave a finding and therefore the findings are neither perverse nor contrary to the decision on record.

The scope of judicial review of is confined to the decision making process and does not extend to the decision itself. In the decision making process, if the Court, Tribunal or authority while deciding the case has ignored the vital evidence and thereby arrived at erroneous conclusion or as mis-construed the provisions of the relevant Act or mis-understood the scope of its jurisdiction, the constitutional power under Art.226 can be invoked to set right the erroneous findings and also to provide crisis of injustice bent to the party complained.

The 3rd respondent raised industrial dispute for his reinstatement in I.D.No.75 of 1996 under Section 2-A(2) of the Industrial Disputes Act (for short 'the Act'), challenging the termination of his service without following the procedure contemplated under Section 25-F of the Act. The allegation would show that he was orally informed by the petitioners on 1.2.1990 that his services were terminated. The writ petitioners in the Tribunal took the specific stand that the petitioners-society is constituted under A.P. Cooperative Societies Act, 1964. The sole object of the petitioners to evolve certain developmental schemes out of the funds provided by the State and Central Governments for the upliftment of scheduled castes beneficiaries in the State. The Corporation as well as the District Societies has got their own byelaws. It is specifically stated that there is no section writer in the District Societies. The 3rd respondent who was appointed as NMRs do not have any right to continue in the society as he was appointed on daily wages basis.

It is not in dispute before this Court that in an earlier occasion due to the completion of the work undertaken by the District Society, several workers including the 3rd respondent were disengaged on 15.6.1989. Some of the NMR workers including the 3rd respondent herein along with others filed W.P.No.7778 of 1989 and batch writ petitions and the said writ petitions were disposed of vide common order dated 12.12.1989 and confirmed the order of termination, this Court in W.P.No.7778 of 1989 and batch, held that:

> "It is obvious that the petitioners will be entitled to the benefits of Sec.25-H of the Industrial Disputes Act, that is whenever an

> employment on a daily wage basis is available. The initial employment of the petitioner was casual employees without following the Constitutional mandates Arts.14, 16 or 391-D or any statutory or other provisions applicable or recruitment through employment exchange or by inviting applications from the eligible candidates which are applicable for making a regular appointment. Directing regularization of all casual employees without keeping in mind the factors mentioned above is likely to lead to abuse of power to make casual appointments to circumvent the constitutional and statutory requirements with the hope of getting such appointments regularized. The writ petitions are accordingly disposed of."

So far as that finding of this Court has become final, now the grievance of the petitioners is that again they were terminated orally on 31.1.1990. A specific plea has been taken by the writ petitioners herein that their is barred by *res judicata,* in view of the orders in W.P.No.7778 of 1989 and batch dated 12.12.1989, the copy of the judgment is also marked as Ex.W.1 in the award. It is not in dispute that the said petition was filed for regularization of the services of the 3rd respondent from the date of initial appointment, on the ground that the termination of the services of the petitioners on 1.2.1990 was not considered by this Court, the said order does not amount to *res judicata* for the present dispute. Though, it is not a *res judicata* as such since the knowledge of the earlier petition, the challenge was made on the prayer sought for is to regularize his services, whereas the prayer made in the present industrial dispute is on the termination of services. But on the ground of issue of *estopel*, the Labour Court ought to have taken into consideration a finding of fact recorded by this Court. The finding of fact is that the initial appointment of Ande Abraham Dharmagani, the 3rd respondent herein was against law and without following the procedure required under law. So the fact that the initial appointment of the 3rd respondent is not on regular process by following the due process of law, it is not disputed before the trial court that the 3rd respondent was engaged as NMR worker and he was not appointed for a particular scheme, but he has not filed any document to show that he was appointed through regular selection process. The 3rd respondent also not adduced any evidence to show that he was appointede in a sanctioned post. Having come to the Court, it is for the petitioners to establish the same and the

initial burden is on the 3rd respondent to show that he was appointed by duly constituted selection committee against the sanctioned vacancies.

The learned counsel for the petitioners placed a strong reliance on a decision reported in **Surendra Kumar Sharma Vs. Vikas Adhikari and another[1],** wherein it was held:

> "A matter as to termination of employment caused by abolition of posts consequent upon the schemes having been abolished for non-availability of funds came up for the consideration of this Court in *Rajendra and others v. State of Rajasthan & others (1999) 2 SCC 317.* It was held that when posts temporarily created for fulfilling the needs of a particular project or scheme limited in its duration come to an end because the need for the project comes to an end either because the need was fulfilled or the project had to be abandoned wholly or partially for want of funds, the employer cannot be a writ of mandamus be directed to continue employment such employees as have been dislodged, because such direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have funds available for the purpose."

Therefore, in this case also, as the 3rd respondent was not appointed in regular post, the question of following the procedure under Section 25-F of the Act does not arise on the sole ground that the 3rd respondent herein worked for more than three years in the petitioners-society and he is entitled to the benefits under Section 25-F of the Act. The 3rd respondent is ordered to be reinstated with continuity of service. No doubt, the 3rd respondent has not adduced any evidence before the Tribunal, but at the same time the burden is on the 3rd respondent to establish that he was appointed in a sanctioned post by following the due process of law. However, the learned counsel for the 3rd respondent placed strong reliance on the decision in between the **Executive Director, District Schedule Caste Service Cooperative Society Ltd., Guntur Vs. Presiding Officer, Labour Court, Guntur** (W.P.No.8812 of 1996), with regard to applicability of provisions of the Industrial Disputes Act to the District

Schedule Caste Service Cooperative Societies and held that the aggrieved man is entitled to invoke decision of the concerned Labour Court or Industrial Tribunal. There is no dispute about the 3rd respondent approaching the Tribunal, though the petitioner's society is registered under A.P. Cooperative Societies Act. But the findings are based upon some evidence or not. Since, this Court, on earlier occasion in W.P.No.7778 of 1989 came to the conclusion that the 3rd respondent and others were not appointed through a duly constituted selection process and in accordance with law, it is deemed that they were appointed on daily wages under a scheme. When the 3rd respondent and others were appointed under the scheme they have no right to challenge the termination in view of the decision relied upon by the learned counsel for the 3rd respondent. Further more, the 3rd respondent has come to the Tribunal after lapse of six years and that delay has not been taken into consideration. By virtue of the said Judgment at best the 3rd respondent and others are entitled to the benefits of Section 25-H of the Act, for daily wages post whenever employment is available.

Therefore, both the writ petitions are allowed quashing the award of the Tribunal in I.D.No.75 of 1996 dated 13.12.2001. No order as costs.

Justice K.C.BHANU.

27th September 2005.

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